

Basic Policies on Legal Technical Assistance (Revised)¹

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I. Basic Concept

Legal technical assistance, which provides legislative assistance or support for improving legal institutions in developing countries around the world, contributes to their self-help efforts toward good governance and building of integral foundations to attain sustainable growth. Japan has continuously emphasized the importance of the “rule of law” and appealed for the need to see it strengthened. Therefore, legal technical assistance is an effective tool for Japan to maintain its honorable position in the international community, and needs to be developed in a strategic manner.

Following the above-mentioned concept -- and based on the Official Development Assistance (ODA) Charter, which defines Japan’s basic policies on foreign assistance, and the ODA Mid-term Policy, etc. -- Japan will actively provide assistance for legal development and operation in the fields of basic and economic laws, as well as other relevant law fields, with the objectives of:

1. Establishing the rule of law in developing countries through sharing universal values, including freedom, democracy, basic human rights, etc.;
2. Improving the environment for sustainable growth and assuring compliance of global rules;
3. Sharing Japan’s experience and systems, strengthening their economic ties with Japan, and establishing a platform for regional cooperation and integration;
4. Improving the trade and investment environment, which is beneficial for Japanese enterprises in expanding their businesses overseas, and assisting in the introduction of environmental and safety regulations; and
5. Enhancing the effectiveness of Japanese economic cooperation, and contributing to developing countries in achieving international development goals, through enhancement of governance.

Japan’s legal technical assistance is characterized by the following aspects:

- It meets the reality and needs of recipient countries through dialogue and coordination with local counterpart organizations with the support of dispatched legal experts. When Japan conducts the assistance by utilizing its own experience and knowledge, the culture, history, development stage and ownership of the recipient country are respected;

¹ This revised Basic Policies have been formulated upon consultation among ministries related to legal technical assistance (including the Ministry of Foreign Affairs; Ministry of Justice; Cabinet Office; National Police Agency; Financial Services Agency; Ministry of Internal Affairs and Communications; Ministry of Finance; Ministry of Education, Culture, Sports, Science and Technology; Ministry of Agriculture, Forestry and Fisheries; and the Ministry of Environment).

- It is not limited to the drafting and amending of laws, but it is further extended to the development of foundations for operating and enforcing the legal institutions properly, to the training of legal professionals and legal education, and to the capacity-building in legal practices for appropriate legal operations.

It is expected that the above-mentioned technical assistance unique to Japan will contribute to capacity-building in developing countries, as well as to the strengthening of bilateral relations between Japan and the developing countries.

II. Implementation Structure

Japan will provide effective and well-balanced assistance in a flexible manner, making extensive use of the above-mentioned characteristics of its legal technical assistance. A variety of methods mentioned below will be combined and effectively coordinated to accommodate the needs of recipient countries:

- ✧ Legal and policy improvement in recipient countries by:
 - dispatching legal experts;
 - providing support from advisory groups formed in Japan, which consist of law scholars, legal practitioners and law operating institutions;
 - carrying out training programs in Japan;;
 - accepting concerned individuals for further studies in the field; and
 - offering development policy loans.
- ✧ Assistance through international donor organizations, etc.

To make the assistance more efficient, it is essential to secure adequate human resources (including the legal experts to be dispatched to recipient countries mentioned above) who will engage in legal technical assistance. Thus, it is necessary to build a basis for the development and effective use of human resources. Moreover, for implementing the assistance, collaboration is essential among relevant ministries, including the Ministry of Foreign Affairs and the Ministry of Justice, as well as cooperation between the public and private sectors -- the Japan Federation of Bar Associations, economic organizations, universities, etc. For this reason, while using the existing cooperative frameworks (including the Annual Conference on Technical Assistance in the Legal Field organized jointly by the Ministry of Justice and the Japan International Cooperation Agency), an all-Japan assistance mechanism will be established through specific assistance measures under the public-private joint initiatives. In addition, for the effective and efficient use of resources in Japan, assistance should be implemented in a selective and concentrated manner with attention to the division of roles with other donors, and in collaboration with research institutions.

Efforts should be made to consistently make productive use of human networks formed in the course of legal technical assistance for effective collection of local information, etc. This could be achieved by maintaining close contact among the Embassy of Japan, the JICA local office and experts dispatched to the recipient country.

III. Others matters necessary for effective implementation of assistance

- (1) As resources which can be invested in legal technical assistance are limited, in formulating new assistance projects, priority will be given for providing assistance effectively and strategically. In developing a legal system necessary for creating a favorable investment climate, in addition to institutional development and capacity-building through technical assistance, more effective use of development policy loans will be promoted. More specifically, efforts will be made to increase the effect of such loans by combining them with the formulation of policy goals based on experience gained through past technical assistance, as well as research on legal technical assistance, dispatch of experts, seminars, etc.
- (2) Though it is difficult to measure the effect of assistance quantitatively due to the nature of legal technical assistance, there is a strong demand for accountability for project achievements. Therefore, in conducting pre- and post-evaluations, investigations for local needs and evaluations on project results should be more elaborately attempted.

IV. Country-focused Implementation Policy

In implementing legal technical assistance, consideration should be given in a comprehensive manner to needs in recipient countries, past assistance achievements, diplomatic and economic importance for Japan, etc. Particularly in the case of legislative assistance in the area of basic laws (as such laws constitute the essential part in building foundations necessary for the development of recipient countries), they must be based on the country's history, culture and lifestyle. Therefore, legal homogeneity should also be considered in countries which share common grounds and affinity with Japan in the above-mentioned areas. Moreover, in addition to the needs in recipient countries, selection of the countries and target areas to be assisted should be made in light of the needs of Japanese economic community.

Based on the above-mentioned policies, for the moment, focus will be placed on Indonesia, Vietnam, Myanmar, Mongolia, Cambodia, Laos, Uzbekistan and Bangladesh, with assistance implementation policies being determined as below for each country. With regard to China, legal cooperation will be continued for promoting the smooth operation of Japanese businesses and for establishing robust governance based on the rule of law in China.

From now on, for the purpose of promoting democracy, establishment of the rule of law, peace-building, improvement of investment environment, cooperation between the public and

private sectors, , and so on, demands for assistance in other Asian countries including Nepal and Timor-Leste, and in African countries will also be considered in accordance with their needs and necessities.

1. Indonesia

1.1 In Indonesia, the challenge is to establish various legal institutions related to private business activities (including trade processing, tax practice, labor law, simplified civil procedure, etc.) and their proper and transparent operation. With this recognition, Japan has assisted in institutional capacity-building, such as the formation of implementation guidelines and human resource development, etc. for fair and smooth enforcement of intellectual property law and competition law. In addition, as governance reform is vital in gaining public trust towards justice at the national and international level, as well as in improving investment climate, Japan has also provided assistance to the democratization of the national police agency and to the establishment of a court-annexed mediation system with the Supreme Court in Indonesia.

1.2 In terms of Japan's assistance to establishment and operation of economic laws, considerable achievements have been made in the areas of intellectual property law and competition law. Japan's assistance has given sufficient results in the field of governance such as assistance to elections and to the police as well. In addition, through development policy loans, Japan promotes the establishment of legal institutions and improvement of their operations for streamlining the investment and business environment. In Indonesia, not only for its own economic growth but also for promoting Japanese investment, and protecting Japanese businesses, there is a substantial need for improving relevant legal institutions and their operations. As many other donors cooperate with Indonesia in the legal field -- and in order to use assistance resources in Japan more effectively and efficiently -- assistance should be provided with careful attention paid to role-sharing with other donors, and with a focus on the cooperation that is truly needed, based on the principle of selection and concentration.

1.3 In the future, emphasis will be placed on assistance in the amendment of basic substantive and procedural laws, which serve as the axis for smooth economic activities; for the enhancement of economic laws (an improvement and expansion of their legislative measures and guidelines is expected); and for the smooth operation of these laws. In doing so, it should also be considered to respond to the needs, if any, for developing information-communication systems. In governance assistance, based on the achievement gained mainly through assistance in the democratization of the national police, attempts will be made to expand the activities of the public police throughout the nation. In addition, in the field of justice which lays the foundation for sound governance, efforts will be made to provide further assistance, mainly through capacity-building, in light of the unique Indonesian undertaking and its cooperation needs.

2. Viet Nam

2.1 Japan has provided assistance to Viet Nam in various ways, including: 1) legislative assistance on several laws, such as the Civil Code and the Civil Procedure Code; and 2) assistance in the economic law field, through provision of policy advice on finance, small and medium-sized enterprises, development of an investment climate, etc., capacity-building of personnel who engage in the execution of competition law, consumer protection law, intellectual property law, regulations on customs clearing, standards and certification, etc. All these types of assistance are based on the recognition of Viet Nam's need of establishing a healthy governance mechanism which serves as a basis for addressing development challenges. These include the promotion of economic growth, strengthening of its international competitiveness, improvement of society and public life, redressing of social disparities, and environmental conservation. In recent years, and in line with the changing variety of challenges in Viet Nam, the area of basic laws has seen assistance provided for legislative-drafting, as well as for assuring proper operation of laws. In this context, focus has been placed on judicial institutional development and capacity-building of legal professionals and officials, etc., at both central and local levels. These Japanese efforts have received high evaluation.

2.2 Viet Nam faces the challenge of enhancing legislation, enforcement and operation of law. Improvement in this area is required for establishing healthy governance based on the rule of law, which will also benefit Japanese business activities.

2.3 Japanese legal technical assistance to Viet Nam is characterized by the use of various designs, including the "Japan-Vietnam Joint Initiative", a bilateral framework of public-private dialogue. Such designs are utilized in the above-mentioned endeavors, primarily through technical cooperation, in order to promote improvement in legislative enactment, enforcement and operation.

2.4 While paying attention to the consistency between assistance and the strategies for legal development and for judicial reform that the Vietnamese government has set forth, assistance will be continued for capacity-building in legal practices. More specifically, it will be aimed at strengthening legislative-capacity and the legal implementation system, through human resource development, etc. (capacity-building of courts, prosecutors offices, the executive authority [including those in local areas], institutional capacity-building of bar associations, etc.).

In the field of economic-related laws, capacity-building will be continued for personnel related to customs, tax affairs, tax system, competition law, finance, intellectual property law, and standard certification. Moreover, in order to improve the investment environment and promote the smooth implementation of public projects, advice will be provided to the bureau in charge of investment promotion policies and measures, as well as to the bureau of public procurement projects, etc. Concurrently, consideration will be given to the possibility of providing assistance in the field of consumer production, public-private partnership (PPP),

and institutional development in relation to environment and energy saving.

3. Myanmar

3.1 In Myanmar, the new administration which took office in 2011 announced its determination to promote democracy and transition to a market economy. Since then, reforms have progressed in an accelerated manner in the field of politics, economy and social development. As pre-conditions for further advancement of these reforms, it is urgently required to improve legal transparency and predictability for promoting investment and businesses. This could be attained through the establishment of the rule of law; strengthening of governance; establishment of laws that properly serve a market economy; resolution of law conflicts or overlaps; and promulgation and publication of laws.

3.2 In order to encourage democratization, and social and economic reforms in Myanmar, Japan will further consolidate legal technical assistance to Myanmar conducive to the building of foundations for the above purposes. In doing so, the basic policy of Japanese assistance will be focused on legislative-drafting capacity-building, as well as human resource development at relevant administrative agencies and judicial institutions. Assistance will be initiated in the economic law field including civil and commercial laws, finance, and customs administration. These are areas that need immediate addressing in Myanmar, and which will also lead to the development of a platform for Japanese business activities. The possibility of assistance will also be considered (while confirming the priority of assistance areas with the government of Myanmar) for the growing needs for legal technical assistance in the area of standards and certification systems, establishment of a good investment climate, intellectual property rights, and smooth implementation of public projects. Furthermore, based on the needs in Myanmar and lessons gained from past assistance achievements, Japanese assistance will be aimed at establishing the “rule of law” in Myanmar, through implementation of all-round assistance in the legal and judicial fields, including the strengthening of governance. Cooperation in the areas urgently required to be addressed for the establishment of freedom and democracy will also be considered.

4. Mongolia

4.1 For establishing a market-economy system and developing related human resources, Japan has assisted Mongolia in establishing its mediation and taxation systems; enhancing the tax-collection capacity; and improving administrative and financial management, and policy-making capacity. Its efforts have received high marks in evaluation.

4.2 Recently, Mongolia has seen a progressive transition to a market economy and a greater intensity in international economic activities. At the same time, however, it has also been pointed out that in Mongolia there have been such problems as legal interpretation and decisions disadvantageous to foreign companies. One of its challenges is to strengthen the functions of the legal and judicial systems and relevant institutions, and to train its personnel.

Overcoming these challenges will be conducive to guaranteeing the rights of citizens and companies, and also to the diversification of dispute-resolution methods.

4.3 The mediation law has been enacted through Japanese assistance. In the future, Japan will continue to support Mongolia in legal training and for the functional operation of its legal system, and will cooperate in the nationwide dissemination of the mediation system.

5. Cambodia

5.1 In order to help the success of various reforms promoted by the Government of Cambodia, Japan has cooperated with the country in the area of customs, tax system, tax affairs, etc. In addition, Japan has provided assistance in drafting and legislating the Civil Code and the Code of Civil Procedure, as well as in human resource development. This has been done through the transfer of know-how on the organizational management of, and the improvement of legal education at the training school of judges and prosecutors. Moreover, Japan has also cooperated in training private lawyers through various training programs.

5.2 Through past cooperation programs, Japan's assistance has achieved significant results, including the enactment of the Civil Code, Code of Civil Procedure and other relevant laws. However, as there still exist needs for assistance in the civil law field (including the assurance of proper operation of enacted laws, etc.), continual assistance is required. It is also necessary to reinforce the coordination mechanism within the government to maintain consistency among laws drafted by each government agency.

5.3 With a continuous focus on the civil law field, Japan will further assist in: the training of core personnel, including legal professionals, judicial officials, university lecturers, etc. These are the professionals who engage in the operation of the two new codes; further improving training in legal practices, strengthening judicial organizations, etc. Moreover, for effective law enforcement, support for the modernization of tax and customs administration, as well as dialogue with stakeholders, will be continued.

6. Laos

6.1 For the purpose of enhancing people's trust in the legal system, through building foundations and human resource development for the establishment of legal systems, Japan has assisted in drafting the Civil Code, personnel capacity-building, etc. This has been achieved with a view towards sound economic growth, strengthening regional economic integration and solidarity promoted by ASEAN, and redressing of regional disparities.

6.2 Through cooperative activities to date, the drafting of the Civil Code as well as human resource development in judicial institutions, universities and research organizations, has been steadily ongoing.

6.3 In the future, Japan intends to further contribute to human resource development in judicial and legal training institutions including universities and research organizations, and also to the improvement of legal practices. Moreover, Japan will consider supporting

establishment of legal systems to improve investment climate in Laos, which has been strongly requested by Japanese businesses in Laos. It will be sought with an attention to the conditions for receiving assistance in the Government of Laos. With regards to law enforcement, cooperation in customs administration will be continued.

7. Uzbekistan

7.1 In order to assist Uzbekistan make steady progress in its economic and social reforms, and succeed in democratization in the long term, Japan has assisted in alleviating difficulties contingent to economic structural reform, and in building a basis for sustainable economic growth. The country-focused assistance policy adopts the “assistance in personnel and institutional development for promoting the transition to a market economy, and for economic and industrial development” as one of the prioritized assistance areas.

7.2 Uzbekistan suffers from inability to smoothly enforce and operate laws, due to nonconformity between laws and due to inconsistent legal interpretation. With the primary objective of improving business environment necessary for developing private sector and facilitating international trade and foreign investment, assistance will be provided in the area of law, tax affairs, human resource development, etc.

7.3 Based on the achievements and lessons learned from past assistance in amending administrative procedure laws, developing law data base, drafting a commentary on the Bankruptcy Law, etc., Japan will consider further legal assistance by carefully identifying the fields which will produce concrete results with Japan’s assistance. It will also look into the possibility of continuing assistance in human resource development for proper operation of law.

8. Bangladesh

8.1 Japan recognizes that a sound governance system needs to be established in Bangladesh as the basis for addressing the development challenge of accelerating sustainable and inclusive economic growth and eliminating poverty. Under this recognition, Japan has assisted in strengthening government functions, enhancing administrative services, etc., and has also supported several other areas to improve its administrative capacity.

8.2 In recent years, Bangladesh has attained steady economic growth through a new production base, as well as its huge domestic market. More and more Japanese companies are expanding their businesses into the country. On the other hand, it has been pointed out that in Bangladesh, investment procedures and legal institutions are impeding the expansion of Japanese businesses. Therefore, solving these problems is not only necessary for the establishment of sound governance based on the rule of law, but will further facilitate Japanese business activities in Bangladesh.

8.3 In its legal technical assistance, Japan has put emphasis on the development of administrative capacity, and from now on, it will consider assistance in the field of economic

law as well.